IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 10935 of 2004

Between:

The Managing Committee, SNSBVSGHH., School, Sattenapalli,

rep by President, Sri V. Vijaya Venkata Lakshmi Narayana
s/o Late V. Sarabhaiah India, r/o Sattenapalli, Guntur District

..... PETITIONER

AND

1 The Commissioner & Director of School Education,

Government of Andhra Pradesh, Hyderabad
2 The District Educational Officer, Guntur District Guntur
3 The Regional Joint Director of School Education, Guntur District Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents No.1 in keeping the proceedings of the 3rd Respondent L.Dis.NO.4501/B/2003 dt 11-12-2003 in abeyance vide telegram dt 10-06-2004 and the consequential proceedings of the 2nd respondent Rc.No.7945/B1/2003 dt 15-06-2004 as illegal, arbitrary and violative of Principles of natural justice and consequential set aside the same.

Counsel for the Petitioner: MR.M.PRABHAKARA RAO

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following:

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ORDER:

The case, in brief, of the petitioner, which is the management of a school, is that during 2003, the school was having a strength of 1196 students with 31 teaching staff. Due to retirement on superannuation from 1996 to 2002, 15 posts of teaching staff had fallen vacant. After prolonged correspondence, third respondent, vide proceedings in L.Dis.No.4501/B1/2003 dated 11-12-2003 accorded permission to fill up those vacant posts subject to the guidelines in G.O.Ms.No.1, Education, dated 01-01-1994 and G.O.Ms.No.75 dated 23-09-2002. In pursuance of the said permission, a Notification calling applications from qualified teachers, for filling up the vacancies as per the prescribed Rules, was published on 23-01-2004. List from the employment exchange was also called for for making appointments. In the meanwhile, third respondent by his proceedings in Rc.No.7945/B1/2003 dated 15-06-2004 kept in abeyance the proceedings of the second respondent dated 11-12-2003 and directed the petitioner not to proceed with the process of appointments until further orders, and followed it by a telegram, without assigning any reason. Since lot of inconvenience is being experienced due to shortage of teaching staff and since third respondent is not passing any further orders canceling his proceedings dated 15-06-2004 in spite of several requests from the petitioner, this writ is filed questioning the communication of the third respondent dated 15-06-2004.

2. In the first instance, the District Educational Officer (second respondent) filed his counter affidavit on behalf of all the respondents alleging that as per the requisition

made by the petitioner, he submitted proposals to the Regional Joint Director of School Education (third respondent) for according permission to the petitioner to fill up the vacant posts, which was accorded by the third respondent.

In pursuance of that permission, petitioner published a paper Notification calling for applications from eligible candidates and also obtained a list of eligible candidates from the District Employment Exchange Office, category wise, and as per the roster fixed by the third respondent. In the meanwhile, on the basis of a telegram from the Commissioner and Director of School Education (first respondent) on 10-06-2004, a telegram was issued to the Correspondent of the petitioner to stop the process of filling up the posts. After clearance is received from the first respondent, further action would be taken.

3 . Surprisingly, without obtaining any permission, first respondent filed another counter affidavit purporting to be on behalf of all respondents 1 to 3, alleging that after the petitioner published paper Notification calling for applications in pursuance of the permission granted to it, he received a representation dated 03-10-2002 from one Smt.V.Sharada Devi wife of the ex-correspondent of the school being run by the petitioner stating that her husband, who was the Correspondent of the school from 1972 to 1999, was killed by V.N.Praveen Kumar, who became the Correspondent of the school, consequent to the death of her husband and made a request for an enquiry being made and to stop the appointments proposed to be made. Second respondent in his letter dated 23-04-2003 reported that V.N.Praveen Kumar and another filed O.S.No.833 of 2000 and is continuing as Correspondent of the school by virtue of the interim orders obtained therein, and V.Naga Venkatesh,

minor represented by his mother and guardian Smt. V.Sharada Devi also filed O.S.No.77 of 2003 impleading him and others as defendants. In W.P.No.3735 of 2004 filed by V.Naga Venkatesh, this Court, by the order dated 01-03-2004, directed him to examine the representation dated 01-12-2003 of V.Naga Venkatesh and pass appropriate orders in accordance with law. So, in order to avoid complications, by his order dated 08-06-2004, he requested the second respondent not to proceed with the filling up of the vacant posts in the school of the petitioner till second respondent submits his enquiry report. Deputy Educational Officer who conducted the enquiry, reported that due to fear of the present Secretary and Correspondent of the school of the petitioner, teaching and non-teaching staff of the school did not respond effectively, and so no further action is being taken. Since the Management of the school is in dispute, filling up of vacancies by the committee constituted by the present management is not desirable.

4. The contention of the learned counsel for the petitioner is that since the Correspondent of the school being run by the petitioner, whose appointment is being challenged by his relatives in a Civil Court, is not the petitioner, and since constitution of the managing body of the petitioner is not in dispute, and since students of the school being run by the petitioner are inconvenienced due to lack of teaching staff, and since Correspondent cannot, in any event, decide the appointments which have to be made by the Selection Committee constituted under Rule 13 of

A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private managements) Rules, 1993 (‘the Rules’), the

impugned orders may be quashed and a direction to the respondents to proceed with appointments as advertised may be given. 5. The contention of the learned Government pleader is that since there is a serious dispute regarding the appointment of Secretary and Correspondent of the school being run by the petitioner and since the staff of the school did not properly respond due to fear of the present Secretary and Correspondent of the school, coupled with the ban imposed on the recruitment to the posts, respondents are not able to proceed further.

6. In reply, the contention of the learned

counsel for the petitioner is that since ban on recruitment was imposed by the Government only on 20-10-2004 through Memo No.12080/COSE/A2/2004-4 and since in Batraju Krishnamurthy Memorial Educational Society

Vs. Government of Andhra Pradesh , it is held that that ban can have only prospective operation and since the notification issued by the petitioner is long prior to

20-10-2004, the memo does not apply to the notification issued by the petitioner.

7. As stated earlier, since second respondent filed the counter affidavit on 27-10-2004 on behalf of respondents

1 to 3, first respondent cannot file a fresh counter affidavit on behalf of respondents 1 to 3 without seeking leave of the Court. Since no leave is obtained for filing additional affidavit, strictly speaking, counter affidavit of first respondent cannot be taken into consideration. Be that as it may, from the averments in the counter affidavit of the first respondent, it is seen that the reason for issuing the proceedings impugned in this petition is the appointment of Secretary and Correspodnentship

i.e., V.N.Praveen Kumar, being under dispute in a Civil Court. Rule 13 of the Rules, lays down the constitution of the Staff Selection Committee.

It consists of President of educational agency or his nominee, Correspondent/Secretary/Manager of the Institution, Headmaster/Principal of the Institution, two subject experts, to be selected by the educational agency from the panel approved by the District Educational Officer. So it is clear that Correspondent/Secretary of an institution would only be one of the members of the Selection Committee. Since there are no allegations against the President of the petitioner and the Head Master, it can be presumed that they would act independently. Two subject experts nominated by second respondent, being officials, would not be under the control of the petitioner or the Correspondent of the school being run by the petitioner. In the circumstances, the apprehension that the Secretary/Correspondent of the school of the petitioner may influence the selection, can be said be unwarranted. Since the wife of the former Secretary seems to have sent a complaint questioning the appointment of the present Secretary/Correspondent i.e., V.N.Praveen Kumar, sometime after the notification was issued, to put the selection beyond the pale of any controversy, if in place of V.N.Praveen Kumar i.e., the present Secretary/Correspondent, if a person to be nominated by the third respondent is made a member of the Selection Committee, the selection can in not event be said to be vitiated.

8. The fact that there is a ban on recruitment is of no consequence in this case, because the notification is issued long prior to the issuance of the memo imposing the ban, and since this Court in Batraju Krishnamurthy Memorial

Educational Society's case (1 supra) held that that ban will have a prospective effect, and cannot have retrospective effect to impede the selections to be made in pursuance of a notification issued prior to the imposition of the ban, and so the selection process can go on.

9. For the above reasons, the writ petition is disposed of with a direction to the third respondent to constitute the selection committee as per Rule 13 of the Rules with the exception that in place of Sri V.N.Praveen Kumar, the present Secretary/Correspondent of the school being run by the petitioner (who should not sit in the selection), he should nominate one member from the managing committee of the petitioner school and complete the process of Selection of the staff as per the notification issued earlier within a period of six weeks from the date of receipt of a copy of this order. No costs.

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(C.Y.SOMAYAJULU, J)

Dated February 17, 2005.

YCR

Note:

Issue copy in a week.

(B/o)

To

1. The Commissioner and Director of School Education,

Government of Andhra Pradesh, Hyderabad
2 The District Educational Officer, Guntur District Guntur
3 The Regional Joint Director of School Education, Guntur District,

Guntur.

4. 2 CCs to G.P. for School Education,High Court Buildings,
Hyderabad. (OUT)

5. 2 C.D. copies.